

fact that by this removal it now means that the political subdivisions may engage in this same practice. I thought we had brought to your attention the fact that in addition to this the evils which follow by reason of what has happened elsewhere are of such a nature that you ought to leave what you have got and keep it.

THE CHAIRMAN: Delegate Hardwicke.

DELEGATE HARDWICKE: Then I take it that you do not propose any test for constitutionally prohibited evil?

DELEGATE SHERBOW: Not I, no.

THE CHAIRMAN: Delegate Gleason.

DELEGATE GLEASON: I wonder if I could just go over this with you once more, while Mr. Scanlan is in the room, and perhaps will put it to rest for all time. I understood you to say in response to his questions that if the Court of Appeals ruled that bingo in fact was a lottery, that under the recommendation of the Committee that would be included within the definition of lottery.

DELEGATE SHERBOW: That is true.

THE CHAIRMAN: Delegate Gleason.

DELEGATE GLEASON: I further understood you to say that it was the Committee's intention, too, that in voting upon this inclusion within the Constitution, lottery would not include the enterprise known as bingo and it would further definitely exclude the enterprise known as bingo.

DELEGATE SHERBOW: The Committee answered it, as I understand it, this way: with all the decisions, with all the attorney general opinions and with the law as we understood it, bingo was not by definition lottery. Therefore, they did not intend to exclude bingo. But you have asked the question. Suppose the Court of Appeals does decide that it is lottery. If our proposal includes the word lottery and it is included within it, then bingo would be included. We think not, based on all of the available law which we have.

THE CHAIRMAN: Delegate Gleason.

DELEGATE GLEASON: Well, Judge Sherbow, this is a very important area of thinking. Two days ago on this floor you stood up when the legislative recommendation was before this group and you cited a case of the Court of Appeals that had thrown out a very substantial program on the basis that a bill had not been recorded in the journal. In that case, as you

will recall, the Court of Appeals resorted to the constitutional debate of 1867. They recited the intention of the discussion that went on with respect to the meaning that was to apply and the validity that was applied to that particular item.

The question becomes very important, it seems to me, here. What do we intend to be included within the term lottery? If the courts will rule in the future by referring to this discussion of the issue in the Constitutional Convention as they have in the past, with respect to the issue that was before us the other day, I would suggest to you, sir, that our intention may have some relevance to their decision and may carry some weight with what to expect. I think it should be very clearly spelled out as to what the meaning of this word is when we vote upon it.

DELEGATE SHERBOW: May I come back to what you were talking about with respect to what occurred the other day? I think you ought to know that I was the judge who decided that this was a very simple situation. Here was a \$50 million bond issue for schools. The Constitution said that on the final roll call there had to be an Aye and Nay vote recorded. Some clerk reached behind him and took down HB-432, when he should have taken down SB-432. It was as simple an error as that. When the General Assembly had adjourned and the governor had signed the bill, it then became known that where it should have been HB-432 it was SB-432 and therefore the recording of the vote did not reflect that the law had passed.

When the matter came before me, it came before me in this posture. State of Maryland could not issue the \$50 million of bonds and so lawyers were employed to test this out. As a judge I said this could not be for one very simple reason. Let's get the facts. When we got the facts in the case, it turned out that what did happen was that this error had taken place. Somebody tried to correct one part of it. Therefore, I ruled that the bond issue had been legally passed. But when it got to the Court of Appeals, they said, we do not know whether you had a right to bring in this evidence or not bring it in but we do know this, the Constitution says the Aye and Nay votes have to be recorded. The Aye vote in the Senate or the House, I do not know which, is on SB-432, not HB-432, and we are not going any further. This was the constitutional requirement, and they therefore, threw out the whole bond issue.